



WISCONSIN LEGISLATIVE COUNCIL REPORT TO THE LEGISLATURE

Legislation on Developmental Disabilities

- 2001 Senate Bill 231 and 2001 Assembly Bill 473, Relating to Requiring the Creation of a Task Force to Develop a Plan for the State Centers for the Developmentally Disabled

October 23, 2001

RL 2001-07

**LEGISLATION ON
DEVELOPMENTAL DISABILITIES**

Prepared by:
Laura Rose, Deputy Director and Rachel Letzing, Staff Attorney
October 23, 2001

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PART I

KEY PROVISIONS OF LEGISLATION

The Special Committee on Developmental Disabilities recommended the following proposal to the Joint Legislative Council for introduction in the 2001-02 Session of the Legislature, which was introduced as companion bills by the Joint Legislative Council.

Senate Bill 231 and Assembly Bill 473

- Require the Department of Health and Family Services (DHFS) to create a task force charged to develop a plan for the state centers for the developmentally disabled. The task force, comprised of individuals representing stakeholder groups and agencies, must develop a plan to maximize the potential for independent living of current center residents, according to their wishes. The task force must also develop a plan for the future of the centers.

The Special Committee also recommended two additional proposals for introduction by the Joint Legislative Council; however, these proposals had not been introduced at the time this report was published. A separate report will be prepared on those bills when they are introduced.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The Joint Legislative Council established the Special Committee by a May 18, 2000 mail ballot and appointed the Co-Chairs and members by June 13 and August 14, 2000 mail ballots, respectively. The Special Committee was directed to review funding issues, staffing concerns and ways to streamline the bureaucracy that provides services to people with developmental disabilities. The committee was directed to focus on providing opportunities for persons with developmental disabilities to live independently, and to review the implications of the *Olmstead* decision.

Membership of the Special Committee, appointed by an August 14, 2000 mail ballot consisted of 2 Senators, 2 Representatives and 9 Public Members. A list of the committee membership is set forth in **Appendix 3**.

B. SUMMARY OF MEETINGS

The Special Committee held eight meetings at the State Capitol in Madison on the following dates:

October 3, 2000	January 18, 2001
November 17, 2000	February 16, 2001
November 27, 2000	March 19, 2001
December 14, 2000	April 27, 2001

The committee meeting activity summary is:

October 3, 2000 meeting. The Special Committee reviewed a Staff Brief on developmental disabilities issues, including a description of community-based services, Family Care, the Medical Assistance Program and residential institutions for the developmentally disabled. In addition, the committee reviewed information prepared by staff regarding laws relating to protective placement, guardianship and conservatorship, and on the U.S. Supreme Court decision *Olmstead v. L.C.* The committee also received briefings from Michael F. Kruley, Special Assistant to the Regional Manager, Department of Health and Human Services, Office for Civil Rights--Region V; Sandra Hammer Affirmative Action/Civil Rights Compliance Office, Neil Gebhart, Office of Legal Counsel, and Joyce Allen, Office of Strategic Finance, DHFS; Gerry Born, Executive Director, the ARC-Wisconsin; and Jim Balestrieri, President, Homes for Independent Living.

November 17, 2000 meeting. The Special Committee reviewed information, prepared by staff, regarding the brain injury waiver (BIW) program, the DHFS 2001-03 Biennial Budget requests relating to developmental disabilities, the effect of the personal care worker rate increase, and the self-determination service delivery model. The committee also heard a presentation from Erica Andres, Program Coordinator, Wisconsin CareGivers Association. The committee identified speakers to invite to the public hearing on November 27, 2000 and

identified issues it wanted to explore at future meetings including regulatory issues concerning residential facilities serving persons with developmental disabilities, the long-term care redesign for children, and whether the committee should have input into the state's *Olmstead* plan.

November 27, 2000 meeting. The Special Committee held a public hearing and heard presentations from invited speakers. Seventeen people testified at the public hearing regarding the need for increased funding to eliminate the waiting lists for CIP-IB, Community Options Program (COP), Family Support and the Birth-to-Three program; the rate increase for personal care workers; the need for respite care; and the shortage of direct-care workers. The committee then heard presentations from invited speakers regarding counties' funding concerns about long-term care services for the developmentally disabled; Family Care; the proposed alternative to Family Care; the Children's Long-Term Care Redesign pilot; self-determination projects; transitional services for developmentally disabled students ages 18 to 21; the Wisconsin Conservation Corps; the Lifespan Respite Care projects; and workforce shortages and training issues.

December 14, 2000 meeting. The Special Committee heard a presentation from Bill Burke, an attorney for the Voice of the Retarded, regarding issues stemming from the *Olmstead* decision. The committee then began reviewing Memo No. 7, *Summary of Recommendations Offered for Committee Discussion* (December 8, 2000), which set forth the recommendations that had been made either by members of the committee or by persons testifying before the committee. As the committee discussed Memo No. 7, it determined that several of the items in the memo, and certain issues raised during the course of the meeting, should be prepared in the form of bill drafts.

January 18, 2001 meeting. The Special Committee heard presentations from People First of Dane County and People First of Wisconsin, regarding the need to close the State Centers for the Developmentally Disabled, and from the Wisconsin Council on Developmental Disabilities, regarding possible legislative recommendations discussed by the committee. The committee then completed its discussion of Memo No. 7 and asked that several more bill drafts and a recommendation letter to the ADA Title II Advisory Committee be prepared for the committee's discussion.

February 16, 2001 meeting. The Special Committee heard presentations from Tom Alt, Deputy Secretary; Laura Flood, Administrator, Division of Care and Treatment Facilities; and Fredi Bove, Chief, Budget Section, DHFS, regarding the department's 1996 plan to close Southern Wisconsin Center for the Developmentally Disabled. The committee also heard a presentation from Shirley Patterson, Director of Continuing Care for Persons with Developmental Disabilities, Minnesota Department of Human Services, regarding the process and plan Minnesota developed to close its state institutional facilities for the developmentally disabled.

March 19, 2001 meeting. The Special Committee reviewed bill drafts and recommendation letters that had been requested by the Special Committee based on discussions of Memo No. 7 at previous meetings. The committee asked that several more bill drafts and a recommendation letter to the Office of the Commissioner of Insurance, as well as redrafts of several bills, be prepared for the committee's discussion.

April 27, 2001 meeting. The Special Committee gave approval to three recommendation letters and several of the bill drafts. The committee also approved several other bill drafts, with amendments discussed at the meeting. In addition, the committee approved a request that staff prepare a bill draft increasing the cigarette tax and appropriating the additional funds to the waiting lists for developmental disabilities services. The co-chairs asked that the bill drafts be consolidated into four composite bill draft--one with fiscal items, one with nonfiscal items, one regarding the state centers task force, and one with the cigarette tax increase.

PART III

LEGISLATION

This part of the report provides background information on, and a description of one of the pieces of the legislation recommended by the Special Committee on Developmental Disabilities for introduction in the 2001-02 Session of the Legislature, and introduced into the Legislature by the Joint Legislative Council.

SENATE BILL 231 AND ASSEMBLY BILL 473

State Centers Task Force

1. Background

The Special Committee heard testimony at several meetings regarding the future of the State Centers for the Developmentally Disabled and whether persons with developmental disabilities are appropriately placed in the state centers.

An attorney from the Voice of the Retarded discussed situations which he felt demonstrated that institutional placement was the appropriate placement choice for individuals with disabilities. At a later hearing, representatives from People First of Wisconsin and of Dane County expressed their belief that persons with developmental disabilities should not be institutionalized, and that the funding for the State Centers should be directed toward community programs. The committee also heard a presentation from representatives from DHFS, who outlined the department's 1996 plan to close Southern Center, and noted that the plan anticipated a three-year phase down of the center, which would lead to closure. The plan was not implemental.

In addition, the Special Committee heard a presentation from Shirley Patterson, Minnesota Department of Human Services, regarding the plan Minnesota developed to close institutional facilities for people with developmental disabilities. Ms. Patterson stated that the plan to phase out the institutions involved negotiations with key stakeholders, including union representatives, families and guardians. She explained that the state's strategy was to place some of the people with greater needs first through home and community-based waiver programs. She noted that a specific date had not been established to close Minnesota's three state institutions; rather, targets were established for a number of people that would be placed out of institutions every year. Ms. Patterson stated that the process of closing state facilities took over 11 years, and that as of June 30, 2000, Minnesota had moved the last person out of its state institutions.

After engaging in extensive discussions about the appropriate role of the State Centers in the long-term care system for people with developmental disabilities, the Special Committee requested a bill draft regarding the future of the State Centers.

2. Description of Bill

The bill requires the DHFS to create a task force charged to develop a plan for the State Centers for the Developmentally Disabled. The task force must include representatives from the following stakeholder groups and agencies:

- a. The DHFS.
- b. The Department of Veterans Affairs.
- c. The Department of Corrections.
- d. The Governor's office.
- e. The American Federation of State, County and Municipal Employees union and other labor groups.
- f. Parents or guardians of current state center residents.
- g. Former and current state center residents.
- h. Advocates for persons with developmental disabilities.
- i. The board member of an intermediate care facility for the mentally retarded.
- j. Organizations that provide services to person with developmental disabilities in the community.
- k. County departments that provide services to persons with developmental disabilities.

By September 1, 2002, the task force must develop a plan for the State Centers for the Developmentally Disabled. The plan shall include any recommended statutory language changes needed to implement the plan. The department shall submit this language to the Legislature, and to the Department of Administration as part of its 2003-05 Biennial Budget request. The plan shall do the following:

- a. Specify the future role of the state centers for the developmentally disabled, and the state, in providing services for persons with developmental disabilities.
- b. Maximize the potential for independent living in the most appropriate setting for each person residing in the state centers, according to the person's wishes.
- c. Define and recommend changes in the role of one or more of the state centers, to functions other than as centers for the developmentally disabled.
- d. Ensure the provision of quality community-based services for persons who can be relocated from the state centers.

- e. Provide for transitional employment opportunities and services for existing staff of the state centers, in the event that one or more of the state centers closes or take on new functions.

Committee and Joint Legislative Council Votes

The following draft was recommended by the Special Committee on Developmental Disabilities to the Joint Legislative Council for introduction in the 2001-02 Session of the Legislature:

WLC: 0142/1, relating to requiring the creation of a task force to develop a plan to close at least one state center for the developmentally disabled, was recommended by a vote of Ayes, 13 (Sens. Robson and Roessler; Reps. Foti and Plouff; and Public Members Brinkman, Friese, Helgesen, McGwin, Olson, Ryan, Thompson, Ward and Wittenmyer); and Noes, 0.

At its May 15, 2001 meeting, the Joint Legislative Council voted to introduce WLC: 0142/1 on a roll call vote as follows: Ayes, 19 (Reps. Rhoades, Black, Bock, Foti, Freese, Gard, Huber, Jensen, Lehman and Meyerhofer; and Sens. Risser, Baumgart, Burke, Chvala, Darling, George, Grobschmidt, Robson and Zien); Noes, 0; and Absent, 3 (Rep. Stone; and Sens. Panzer and Rosenzweig). The proposal was subsequently introduced as 2001 Senate Bill 231 and 2001 Assembly Bill 473.

APPENDIX 2

JOINT LEGISLATIVE COUNCIL

s. 13.81, Stats.

Cochair
FRED A. RISSE
Senate President
5008 Risser Road
Madison, WI 53705-1365

JAMES BAUMGART
1419 North 16th Street
Sheboygan, WI 53081-3257

BRIAN BURKE
Cochair, Joint Comt. on Finance
2029 North 51st Street
Milwaukee, WI 53208-1747

CHARLES J. CHVALA
Senate Majority Leader
1 Coach House Drive
Madison, WI 53714-2718

ALBERTA DARLING
*Ranking Minority Member, Joint
Comt. on Finance*
1325 West Dean Road
River Hills, WI 53217-2537

SPENCER BLACK
5742 Elder Place
Madison, WI 53705-2516

PETER BOCK
4710 West Bluemound Road
Milwaukee, WI 53208-3648

STEVEN M. FOTI
Assembly Majority Leader
1117 Dickens Drive
Oconomowoc, WI 53066-4316

STEPHEN J. FREESE
Speaker Pro Tempore
310 East North Street
Dodgeville, WI 53533-1200

SENATORS
GARY R. GEORGE
President Pro Tempore
1100 West Wells St., #1711
Milwaukee, WI 53233-2326

RICHARD GROBSCHMIDT
912 Lake Drive
South Milwaukee, WI 53172-1736

MARY PANZER
Senate Minority Leader
635 Tamarack Drive West
West Bend, WI 53095-3653

REPRESENTATIVES
JOHN GARD
Cochair, Joint Comt. on Finance
481 Aubin St., PO Box 119
Peshtigo, WI 54157-0119

GREGORY HUBER
*Ranking Minority Member, Joint
Comt. on Finance*
406 South 9th Avenue
Wausau, WI 54401-4541

SCOTT R. JENSEN
Assembly Speaker
850 South Springdale Road
Waukesha, WI 53186-1402

Cochair
KITTY RHOADES
Representative
708 4th Street
Hudson, WI 54016-1643

JUDITH ROBSON
2411 East Ridge Road
Beloit, WI 53511-3922

PEGGY ROSENZWEIG
6236 Upper Parkway North
Wauwatosa, WI 53213-2430

DAVID ZIEN
1716 63rd Street
Eau Claire, WI 54703-6857

SHIRLEY KRUG
Assembly Minority Leader
6105 West Hope Avenue
Milwaukee, WI 53216-1226

MICHAEL LEHMAN
1317 Honeysuckle Road
Hartford, WI 53027-2614

JEFF STONE
7424 West Forest Home Ave.
Greenfield, WI 53220-3358

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

DEVELOPMENTAL DISABILITIES,
SPECIAL COMMITTEE ON

Cochair

JUDY ROBSON
Senator
2411 East Ridge Road
Beloit, WI, 53511-3922

Cochair

STEVEN FOTI
Representative
1117 Dickens Drive
Oconomowoc, WI 53066-4316

SENATOR

CAROL A. ROESSLER
1506 Jackson Street
Oshkosh, WI 54901-2942

REPRESENTATIVE

JOE PLOUFF
1421 Messenger Street
Menomonie, WI 54751-4620

PUBLIC MEMBERS

DIANE BRINKMAN
Director, Special Education
Lakeland School
504 West Court Street
Elkhorn, WI 53121-1657

KATHLEEN MCGWIN
Executive Director, Kindcare, Inc.
1006 Western Avenue
Watertown, WI 53094-4851

DALE THOMPSON
Former Head of Administration
for Developmental Disabilities,
Rock County
2332 Mt. Zion Avenue
Janesville, WI 53545-1261

TERRY L. FRIESE
President, Petersen Health Care
of WI, Inc.
900 Boyce Drive, P.O. Box 857
Rhineland, WI 54501-0857

NANCY OLSON
Parents & Providers Early
Learning Network: ELN
UW-Waisman Center
4614 Fuller Street
Schofield, WI 54476-3007

DR. MICHAEL WARD
Assistant Prof., CHS; Rehabilitation
Medicine, UW Hospitals
600 Highland Ave., E3/353
Madison, WI 53792-3284

SUE HELGESEN
People First of Dane County
6810 Schroeder Road #16
Madison, WI 53711-2381

KATHRYN RYAN
Division Mgr., Dodge Co. Human
Services & Health Dept.
143 East Center Street
Juneau, WI 53039-1371

JAYN WITTENMYER
Board Member
The Arc-Wisconsin, Inc.
2614 Lunde Lane
Mt Horeb, WI 53572-2442

STUDY ASSIGNMENT: The Committee is directed to review funding issues, staffing concerns and ways to streamline the bureaucracy that provides services to people with developmental disabilities. The study will focus on providing opportunities for persons with developmental disabilities to live independently. The Committee shall review the implications of the Olmstead decision. The Special Committee shall report its recommendations to the Joint Legislative Council by January 1, 2001.

Established and Cochairs appointed by a June 13, 2000 mail ballot; and members appointed by an August 14, 2000 mail ballot.

13 MEMBERS: 2 Senators; 2 Representatives and 9 Public Members.

LEGISLATIVE COUNCIL STAFF: Rachel Letzing, Staff Attorney; Laura Rose, Senior Staff Attorney; and Tracey Uselman, Support Staff.

APPENDIX 4

Committee Materials List

October 3, 2000 Meeting

[**Staff Brief 00-3**](#), Programs and Services for Persons With Developmental Disabilities in Wisconsin (9-27-00)

[**Memo No. 1**](#), Laws Relating to Protective Placement, Guardianship and Conservatorship (9-27-00)

[**Memo No. 2**](#), The Olmstead Decision (9-27-00)

November 17, 2000 Meeting

[**Memo No. 3**](#), Brain Injury Waiver Program (11-9-00)

[**Memo No. 4**](#), Department of Health and Family Services 2001-2003 Biennial Budget Requests Relating to Persons With Developmental Disabilities (11-9-00)

[**Memo No. 5**](#), Effect of the Rate Increase for Personal Care Workers (11-9-00)

[**Memo No. 6**](#), The Self-Determination Service Delivery Model for Persons With Developmental Disabilities (11-16-00)

[**RL 91-14**](#), Legislation on Fair Housing and Community Living Arrangements (11-11-91)

[**RTC 97-16**](#), Recommendations of the Joint Legislative Council's Special Committee on Programs for Developmentally Disabled Persons (26-98)

[**RL 97-9**](#), Legislation on Programs for Persons With Developmental Disabilities (3-20-98)

[**Preliminary agenda**](#) for the November 17, 2000 meeting

December 14, 2000 Meeting

[**Memo No. 7**](#), Summary of Recommendations Offered for Committee Discussion (12-8-00)

[**Memo No. 8**](#), Attached Report Relating to Long-Term Care Work Force Issues (12-8-00)

[**Report No. 12 to the 1989 Legislature**](#), Legislation on Developmental Disabilities Laws (9-21-89)

[**Preliminary agenda**](#) for the December 14, 2000 meeting

[**Audit Report 00-11**](#), "An Evaluation, Division of Vocational Rehabilitation, Department of Workforce Development", Legislative Audit Bureau (10-00)

January 18, 2001 Meeting

[**Memo No. 9**](#), Minnesota's Service System for Persons With Developmental Disabilities (1-11-01)

[**WLCS: 0058/1**](#), relating to funding for the family support program and increasing an appropriation

[**WLCS: 0059/1**](#), relating to adding legislative members to the council on developmental disabilities

[WLCS: 0060/1](#), relating to permitting counties to provide the nonfederal share of medical assistance to create additional brain injury waiver slots

[WLCS: 0061/1](#), relating to piloting the children's long term support redesign and increasing an appropriation

[WLCS: 0062/1](#), relating to requiring the department of health and family services to implement, on a pilot basis, an alternative model to the family care program before increasing the number of counties in which family care operates

[WLCS: 0063/1](#), relating to providing funding for developmental disabilities services, requiring rule-making and increasing an appropriation

[Preliminary agenda](#) for the January 18, 2001 meeting

February 16, 2001 Meeting

[Memo No. 10](#), **Attached Report Relating to States' Developmental Disabilities Funding** (2-13-01)

[Memo No. 11](#), **The Business Employees' Skills Training (BEST) Program** (2-13-01)

[WLC: 0063/2](#), relating to providing funding for developmental disabilities services, requiring rule-making and increasing an appropriation

[WLC: 0085/1](#), relating to prohibiting promulgation of administrative rules with a fiscal effect until the legislature appropriates sufficient funds to implement the rule

[WLC: 0100/1](#), relating to requiring the department of health and family services to promulgate rules relating to registered nurse visits as part of a review of a plan of care for persons receiving personal care services under the medical assistance program, and requiring rule-making

[Draft letter](#) to Secretary of Health and Human Services, Tommy G. Thompson and Members of Wisconsin's Congressional delegation, regarding support for paying parents who are caregivers to their minor children (2-9-01)

[Draft letter](#) to George Potarcke, Chairperson, ADA Title II Advisory Committee, and Tom Rand, Chairperson, Wisconsin Council on Long-Term Care, regarding recommendations for an Olmstead plan for Wisconsin (2-9-01)

[Letter with attachments](#), from Maureen Arcand, relating to aging and developmental disabilities (1-30-01)

[Preliminary agenda](#) for the February 16, 2001 meeting

[Testimony](#), from Tom Alt, Deputy Secretary, Department of Health and Family Services, from his February 16, 2001 presentation to the Special Committee

March 19, 2001 Meeting

[WLC: 0100/1](#), relating to requiring the department of health and family services to promulgate rules relating to registered nurse visits as part of a review of a plan of care for persons receiving personal care services under the medical assistance program, and requiring rule-making

[Letter](#), from Jim Balestrieri, President, Homes for Independent Living, to Steve Foti (2-26-01)

[Memo](#), from Kathleen McGwin, to the Special Committee on Developmental Disabilities (February 16,

2001)

[Preliminary agenda](#) for the March 19, 2001 meeting

April 27, 2001 Meeting

[Handout](#), **Respite Care Association of Wisconsin, Inc.**, distributed at the request of Public Member Nancy Olson (undated)

[Draft letter](#), to **Secretary Tommy Thompson**, U.S. Department of Health and Human Services and Members of the Wisconsin Congressional Delegation (4-12-01)

[Draft letter](#), to the **Commissioner of Insurance**, relating to liability issues of concern to providers of developmental disabilities services (4-26-01)

[LRB-2132/2](#), relating to respite care projects and making an appropriation

[Memorandum](#), from **Kevin Underwood**, President, Wisconsin Parents Coalition for the Retarded, Inc., to the Special Committee (4-17-01)

[WLC: 0058/2](#), relating to funding for the family support program and increasing an appropriation

[WLC: 0059/2](#), relating to adding legislative members to the council on developmental disabilities, and requiring an annual report to the legislature

[WLC: 0060/2](#), relating to permitting counties to provide the nonfederal share of medical assistance to create additional brain injury waiver slots

[WLC: 0063/3](#), relating to providing funding for services for persons with developmental disabilities who are on waiting lists for services; requiring the department of health and family services to establish criteria for distribution of this funding; and to develop a plan to eliminate waiting lists for services for persons with developmental disabilities by the end of state fiscal year 2004-05; requiring the council on developmental disabilities to evaluate, and report to the legislature, the number of persons with developmental disabilities on waiting lists for services at the end of each calendar year; requiring rule-making; and making an appropriation

[WLC: 0100/2](#), relating to requiring the department of health and family services to promulgate rules relating to registered nurse visits as part of a review of a plan of care for persons receiving personal care services under the medical assistance program, and requiring rule-making

[WLC: 0116/1](#), relating to requiring the department of health and family services to develop a plan to require one subunit within the department of health and family services to administer all institutional and community-based services for persons with developmental disabilities; and to combine all funding under the medical assistance program for institutional and community-based services into one appropriation

[WLC: 0142/1](#), relating to requiring the creation of a task force to develop a plan to close at least one state center for the developmentally disabled

[WLC: 0146/1](#), relating to requiring annual adjustments to the rates for the community integration program for residents of state centers and the community integration program for persons with mental retardation and the community aids basic county allocation, to reflect changes in the consumer price index

[Preliminary agenda](#) for the April 27, 2001 meeting